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Supreme Court of the United States

October Term, 1941

NEBO OIL COMPANY, a Trust, by W. H. Clement, Trustee,
Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

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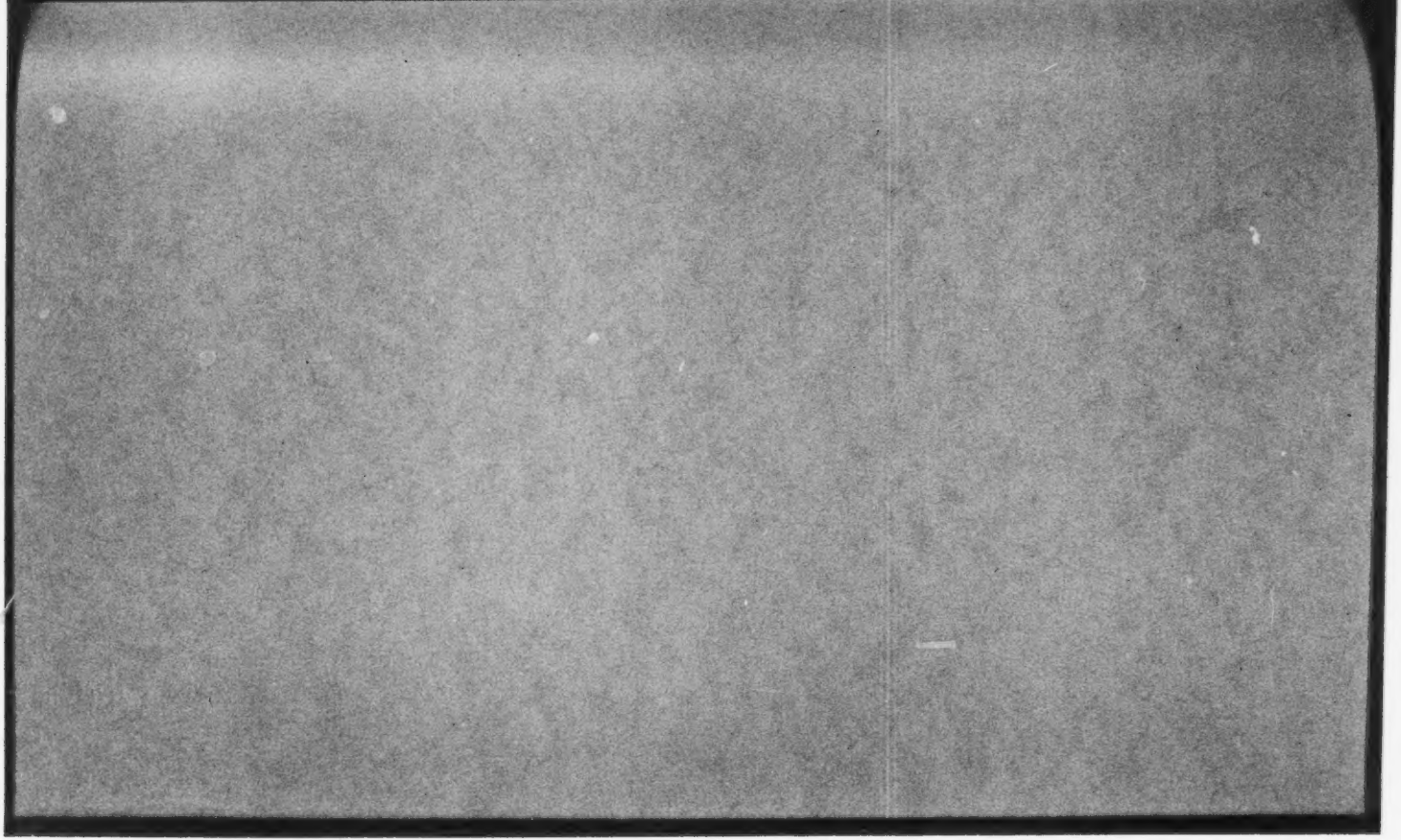

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OCTOBER TERM, 1941

No. ---------

NEBO OIL COMPANY, a Trust, by W. H. Clement, Trustee,
Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The Petitioner, Nebo Oil Company, a Trust, by W. H. Clement, Trustee, respectfully petitions this Honorable Court for a Writ of Certiorari in the above entitled cause, to the United States Circuit Court of Appeals for the Tenth Circuit, and respectfully shows to this Honorable Court as follows:

Short Statement of the Matters Involved

The Petitioner made a fiduciary income tax return of its income for the years 1934, 1935, 1936, and 1937. The Commissioner of Internal Revenue served a notice of deficiency, the basis thereof being that Petitioner was properly classified as an association taxable as a corporation, and,

therefore, should have filed a return of its income for such years upon a corporate form. Petitioner then filed a Petition for review by the United States Board of Tax Appeals. At the trial before the Board of Tax Appeals, evidence was presented by both Petitioner and the Government. The Board found in Petitioner's favor and held that under the facts Petitioner was a trust for the purposes of income taxation and not an association taxable as a corporation. (R-13)

The Respondent, Guy T. Helvering, Commissioner of Internal Revenue, filed a Petition for review of the Board's decision with the United States Circuit Court of Appeals for the Tenth Circuit (R-21). The Circuit Court reversed the ruling of the United States Board of Tax Appeals, held Petitioner properly classified by collector as an association, and remanded the cause for further proceedings (R-77). The opinion of the Circuit Court is officially reported in 126 Fed. (2d) 148. The language of the Circuit Court indicating its reason for such reversal is found R-77.

> "Hence, we conclude the resemblance to a corporate organization was sufficient to warrant the Commissioner in treating the trust as an association. See Morrissey v. Commissioner, supra; Helvering v. Coleman-Gilbert Associates, 296 U. S. 369, 371-373, 56 S. Ct. 285, 80 L. Ed. 278; and Commissioner v. Fortney Oil Co., 6 Cir., 125 Fed. (2d) 995, (decided February 7, 1942)."

The evidence R-25, et seq., indicated that Petitioner resembled a trust in some respects, a partnership in others, and in still others a corporation. The Board held that Petitioner was predominately akin to a trust. Petitioner now contends that the Circuit Court exceeded its powers of re-

view upon the appeal in reversing the Board's determination of fact, and that the judgment of the Circuit Court was erroneous in classifying Petitioner as an association, as Petitioner more nearly resembles a partnership, if not a trust.

Reasons Relied on for the Allowance of the Writ

I.

Petitioner says that the Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court for that it exceeded the limitations upon its jurisdiction on review from the Board of Tax Appeals, as fixed by this Court, *Helvering* v. *National Grocery Company*, 304 U. S. 282, 58 S. Ct. 932. And for that the Circuit Court was prohibited by Section 1 under Subsection c of Section 1141, Title 26, *U.S.C.A.*, from reviewing a determination of fact by the said Board of Tax Appeals. And for that the Circuit Court could not determine that Petitioner is an association taxable as a corporation when the facts indicate that Petitioner more nearly resembles a partnership, if not a trust. *Lewis and Company* v. *Commissioner*, 301 U. S. 385, 57 S. Ct. 799.

II.

Petitioner says that the decision of the Circuit Court of Appeals is in apparent conflict with the decision of the 5th Circuit in *Del Mar Addition* v. *Commissioner*, 113 Fed. (2d) 410, and the decision of the 5th Circuit in the case of *Commissioner of Internal Revenue* v. *Horseshoe Lease Syndicate*, 110 Fed. (2d) 748, certiorari denied 311 U. S. 666, 61 S. Ct. 24, for that in this case the Circuit Court disregarded the finding by the Board of Tax Appeals of the

taxable status of Petitioner and made its own determination of Petitioner's taxable status in conflict with the above mentioned decisions which held that finding of the Board in determinations of this classification must be upheld if there is substantial evidence to support it, even though conflicting inferences might be drawn by reasonable men from the undisputed facts.

III.

Petitioner says that the Circuit Court of Appeals decided a Federal Question in a way probably in conflict with the applicable decisions of the 6th Circuit Court in the case of *Commissioner of Internal Revenue* v. *Gibbs-Preyer Trusts Nos. 1 & 2*, 117 Fed. (2d) 619, and with the decision of the 5th Circuit in the case of *Commissioner of Internal Revenue* v. *Rector & Davidson*, 111 Fed. (2d) 332, certiorari denied 311 U. S. 672, 61 S. Ct. 33, for that the courts in their decisions say that an entity with the characteristics of Petitioner is more properly taxable as a partnership, if not as a trust, and the court in this case determined Petitioner to be an association.

Prayer

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that court to certify and send to this Court for its review and determination, a full and complete transcript of the record in all proceedings in the case entitled and numbered on its docket Commissioner of Internal Revenue, Petitioner, v. Nebo Oil Company, Trust, Respondent, No. 2320, and that

the judgment of said court in said cause may be reversed by this Honorable Court, and that your Petitioner may have such further relief in the premises as to this Honorable Court may seem just.

GEORGE M. GREEN,
T. MURRAY ROBINSON,

Attorneys for Petitioner.